

## Summary of Policies and Staff Recommendation for Privately Owned Storage Hangars

The Camarillo Airport was opened as a civilian airport in 1976 and there was immediate demand to store aircraft at the airport. When the County began operating the airport, it had no monetary funds for the construction of hangars, and offered space to private individuals to install privately owned storage hangars in the early 1980's under a month-to-month license agreement. The month-to-month agreement was used because the airport had not yet published an Airport Master Plan and it was unknown whether the hangars would be able to remain in the locations they were placed, or at all. According to prior airport administrators Thomas Volk and Christopher Kunze, in conversations held in March 2018, the intent of airport management who opened the airport in the 1970's was not to create a perpetual lease with no reversion at Oxnard or Camarillo airports. A 1987 Ventura County Grand Jury Report recommended moving toward County ownership of all aircraft storage hangars at the airports.

It has now been 30-plus years since these hangars were placed on the airport, even longer in some cases at Oxnard airport, with only a handful being replaced with new structures over the past several years. Staff is working with a committee of tenants to modernize the lease, and during the process have reviewed grant assurances, FAA Leasing Policy, and industry best practices. All these guidance documents demonstrate the need to transition from what is viewed by tenants as a "perpetual" month-to-month lease to a long-term lease with reversion or removal if the hangar is no longer needed or of value, even though the notion of reversion is unpopular with the hangar owners.

### **Recommendation**

Providing a five year term would satisfy the requirements of the FAA and be consistent with industry best practices, but staff does not view that as equitable. Therefore, staff will be recommending longer terms based on the size, age and condition, and perceived value of the improvements, not including the value of the land. While some tenants have claimed that the County's proposed lease terms disregard the resale value of their hangars, these tenants appear to have difficulty separating the value of their hangar from the value of the County-owned land on a popular airport, on which the hangar sits. The County owns the land, therefore it would not be appropriate for the County to pay the tenants for something the County already owns.

After reviewing these assurances, policies, reports (including the 1987 Ventura County Grand Jury Report), industry best practices, and leases from other airports, staff's

recommendation is to transition the month-to-month leases for privately owned storage hangars to term leases with County discretion for reversion or removal.

To determine the appropriate length of term the County has considered several ways in which a term could be provided to tenants, including input from the Lease Update Committee, and concluded that a one-size-fits-all term is not justified, given the variety of hangars involved. By taking that variety into account, the County believes a tiered system would benefit the tenants and the County the most. The County proposes to set terms of leases based on a hangar's useful life, amortization of cost, and permitting status.

Staff considered the history of "permitted hangar structures" and "permitted improvements" to the hangars by Building and Safety. After reviewing the hangar lease files it was concluded that all of the original T-Hangars and Box Hangars are unpermitted structures and that improvements to these Hangars were also, for the most part, not permitted. The recently installed Replacement Hangars (New Hangars) are shown as having been properly permitted structures and have a longer useful life than the original T and Box Hangar types.

Furthermore, when looking at the Camarillo and Oxnard Airports Hangar Valuation Report dated October 18, 2016, the appraisal document primarily reflects two types of hangar structures (T-Hangars, and Box Hangars) which vary in cost. With the above in mind, staff recommends the following terms:

- Original T-Hangars be provided a 10-year term
- Original Box Hangars be provided a 15-year term
- Replacement Hangars (New Hangars) that have been assembled/constructed in the past few years be provided a 20 year term

Staff recognizes the significance of this transition and is proposing longer terms than best practices would recommend as consideration for the tenants. There is value in the length of the term for the tenant, and an element of certainty is provided, for both the tenant and the County, that there will be space for the hangar and aircraft to remain located on the airport, and that the tenant will support the airport financially as well as the airport's purpose.

This model is consistent with Airport and FAA leasing policy in that a longer term is typically offered with larger capital investment by the private party. This is also consistent with airport leasing policy on long term commercial leases, and based on conversations with the FAA, staff believes providing these varying lengths of term is a reasonable approach and would not be considered unjustly discriminatory. The new lease also gives the County the option to either continue to use the hangar if it has useful life remaining or have the tenant remove it from the airport. This again complies with FAA leasing policy.

Below are other sample leases recently reviewed by committee members and staff:

- **Majority of leases in the US** – long term lease with reversion.
- San Luis Obispo (SBP) = extended commercial lease, that includes reversion or removal.
- Sonoma County (STS) = Remains month-to-month, but County gets 50% of profit when hangar is sold.
- VC Department of Airports lease transfer fee is 2%, the Channel Islands Harbor is 10%.
- **Legally not a taking.** While some tenants have claimed that reversion constitutes an unconstitutional taking of property without compensation, the claim is mistaken. Where the terms of a property transfer are governed by a lease, that transfer does not constitute a taking merely because the landlord happens to be a governmental entity.

In *County of Ventura v. Channel Islands Marina, Inc.* (2008) 159 Cal.App.4th 615, the County (as landlord) told a harbor tenant it could not remove improvements and did not issue permits to allow removal. The tenant sued the County, claiming the County's position amounted to an unconstitutional taking of the improvements. The Court of Appeal did not agree, saying that the existence of the lease meant this was not a taking:

"To say that a breach of contract or lease implicates the Fifth Amendment to the United States Constitution or article I, section 19 of the California Constitution, stretches the meaning of those provisions well beyond reason."

In summary, the following items demonstrate the need to make this transition:

- **January 9, 2018 FAA Letter** mentions current practices of relocating a hangar "for any reason" or with "60 days notice" as potentially unreasonable terms. This is the very nature of month-to-month leases where either party can terminate the lease without cause with 30 or 60 day notice. The FAA letter further discusses that month-to-month leases are NOT the proper vehicle for every type of hangar, specifically if there is investment by an individual or private entity to construct/install a hangar.
- **FAA Grant Assurance 22 Economic Nondiscrimination** in part states, "It (the sponsor) make the airport available as an airport for public use on reasonable terms and without unjust discrimination..." This supports varying terms on leases based on level of investment, and that the airport is able to, and should dictate the terms of the lease.
- **FAA Grant Assurance 24 Fee and Rental Structure** discusses how an airport will be self-sustaining. When reversion occurs, rental rates transition from ground lease rates to facility lease rates, thus generating more revenue for the airport.
- **FAA Grant Assurance 25 Airport Revenues** in part states that all revenues generated at the airport shall remain on the airport and be reinvested into the

airport for its maintenance and development. The ability for private hangar owners to sell hangars without the County also benefitting could be viewed by the FAA as revenue diversion. Subleasing hangars in competition with the County's renting of hangars could also be seen as revenue diversion, and is certainly a commercial activity that is prohibited in storage hangars. Rent from County hangars, remains on the airports and is reinvested in the airports. Rent from subleasing private hangars leaves the airport and only benefits the hangar owner.

- **FAA Grant Assurance 29 Airport Layout Plan** establishes control of the airport for the sponsor to develop the airport to best meet the needs of the local market. This includes relocation of facilities as needed.
- **FAA Grant Assurance 38 Hangar Construction** specifically states that an individual constructing a hangar on the airport should be offered a long term lease to amortize their investment.
- **FAA Compliance Manual 5190.6B, Leasing Policy 4.b.3. Term** states in part that "Most tenant ground leases of 30 to 35 years is sufficient to retire a tenant's initial financing and provide a reasonable return for tenant's development of major facilities. Leases of more than 50 years would be considered disposal of airport property..."
- **FAA Compliance Manual 5190.6B, Leasing Policy 4.b.5. Title** states in part, "Does the title to tenant facilities vest in the airport sponsor at the expiration of the lease?" which is to say that reversion of improvements is consistent with FAA policy.
- **1987 Ventura County Grand Jury Report** recommends that the Board of Supervisors consider having all storage hangars on the airports be owned by the County.
- **ACRP Report 47, Sections 2.2.5, 2.2.10, and 6.2.5** discuss lease term and reversion as industry best practices.
- **Ventura County Airports Policy Review Privately Owned Aircraft Storage Hangar Agreements.** A staff commissioned report by Aeroplex/AeroLease that discusses leasing practices with regard to consistency with FAA policies and best industry practices. The report suggests that staff should offer up to a five year term with reversion for all privately owned storage hangars.
- **Possessory Interest Tax.** The Ventura County Assessor's Office assumes tenant will be in private hangar at least ten years based on the substantial investment made. Actually providing a lease that will match this provides another element of consistency.